

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

R.A. No.142 of 2019

Muhammad Shoaib
Versus

The learned 2nd Additional Sessions Judge & others



Date	Order with signature of Judge
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Date of hearing: 21.01.2020

Mr. Muhammad Hanif for applicant.

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Muhammad Shafi Siddiqui, J.- Applicant in this Revision Application was plaintiff in Suit No.901 of 2014. The plaint was in respect of a declaration, permanent injunction and specific performance of an oral agreement regarding sale of vehicle and recovery of damages. The trial Court, which framed as many as six issues, on the strength of the primary issue, being one for specific performance, was pleased to dismiss the suit on merit. The applicant preferred an appeal bearing No.144 of 2018 wherein the appellate Court, on consideration of the facts and circumstances of the case and the evidence, was pleased to dismiss the appeal of the applicant as well. The applicant thus has preferred this Revision Application under section 115 of Civil Procedure Code, being aggrieved of the aforesaid two judgments.

I have heard the learned counsel for applicant and perused the material available on record whereas respondent No.2 or his counsel did not show up.

The issues which were framed by the learned trial Court are as under:-

1. Whether the suit of the plaintiff is maintainable under law?
2. Whether the plaintiff is an employee of defendant?

3. Whether the plaintiff has purchased the Suzuki No.KP-0462 from the defendant in consideration of Rs.3,90,000/-?
4. Whether the defendant had given the cash, cheques to the plaintiff for payment/deposit of the amount in the account of defendant/his partners?
5. Whether the plaintiff is entitled for the relief as claimed?
6. What should the decree be?

There is no dispute to the fact that the applicant was working as a driver with the respondent at one point of time. The agreement that relates to the subject vehicle was only oral. While plaintiff/applicant claimed that he has allegedly deposited the installments of the vehicles, in paragraph 20 of the plaint he claimed that defendant/respondent owe an amount of Rs.200,000/- towards his salary w.e.f. October, 2013 to May, 2014. It is however inconceivable that though the alleged salary remained unpaid and trust deficit was developed, he (applicant) continued to deposit the installments allegedly w.e.f. October 2013 to February, 2014 without any written instrument in this regard and further deposited an amount of Rs.150,000/- in the account of one Noman Farooqui with whom the respondent claimed to have business terms. This amount was also deposited without any written authority from respondent.

Above intricate questions, based on factual controversy, were hardly established by the applicant by adducing corroborative evidence. The order of the trial Court in relation to Issue No.3 shows that he (applicant) failed to prove the oral agreement by confidence inspiring evidence. No witnesses were examined in support of the aforesaid oral agreement, as could be seen from the judgment of the trial Court and appellate Court. This was primary issue settled by the trial Court as to whether plaintiff was entitled for specific performance of an oral agreement, which remained un-established on the part of the applicant.

The appellate Court having faced with the similar circumstances has also dilated upon the intricate question that why would the respondent, being defendant in the suit, would offer his vehicle for sale to his driver/applicant and he (applicant) would continue to deposit the amount without written instrument, in spite of the fact that his salary was not being paid to him, allegedly. The matter apparently was not sent to the handwriting expert as far as alleged transfer letter is concerned. The original documents admittedly were and are with the respondent No.2. On the basis of these facts and circumstances a view was formed by the trial Court, which was maintained by the appellate Court, which ultimately led to dismissal of suit and appeal. As a primary question the oral agreement is required to be established independently irrespective of any deposits made in the accounts of the firm. Those deposits independently cannot prove that the payments were towards sale consideration and that too when relationship between them was lacking trust.

Even on account of reappraisal of the evidence, another view could not be formed in terms of Section 115 CPC in view of concurrent findings of two Courts below when on the basis of a set of evidence a lawful view has already been formed by the trial Court, which has been maintained by the appellate Court. Thus, on the basis of set of facts placed and argued by the applicant's counsel, no interference is required and hence by short order dated 21.01.2020 the Revision Application was dismissed and these are the reasons for the same.

Dated: 24-1-2020

Judge